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APPLICATIONS FOR REVIEW AT THE REFUGEE REVIEW TRIBUNAL*

(Reflects law as at 1 July 2009)

WHAT IS THE REFUGEE REVIEW TRIBUNAL?

The Refugee Review Tribunal (“RRT”) is an independent review body. The RRT reviews onshore refugee cases in order to decide whether an applicant is a refugee. The RRT does **not** review offshore humanitarian cases.

A refugee is a person who:

owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his or her habitual residence, is unable, or, owing to such fear, is unwilling to return to it. (Article 1A(2) of the Refugee Convention)

HOW CAN THE REFUGEE REVIEW TRIBUNAL HELP YOU?

The RRT can help you by reconsidering your application for a protection visa. The RRT has the power to:

- overturn or remit a decision
- substitute another decision
- return the case to the Department of Immigration (“Department”) for reconsideration, or
- affirm the original decision.

Generally the RRT will either:

- “affirm” a decision of the Department – ie agree with the decision of the Department (this means the appeal is unsuccessful), or
- “remit” a decision of the Department – ie disagree with the decision of the Department and require the Department to reconsider the case on the basis of the RRT’s findings (ie the appeal is successful).

The RRT must follow immigration law. Therefore, it does not have the power to grant a protection visa where the applicant is not a refugee within the meaning of the above definition.

* IARC does not guarantee the accuracy of any information contained in this information sheet. It contains general information and is not a substitute for legal advice

WHO CAN APPLY FOR REVIEW AT THE REFUGEE REVIEW TRIBUNAL?

An application for review at the RRT can be made by the following people:

- a person who applied for a protection visa on the basis that they are a refugee or a family member of a refugee and the application was denied, or
- a person whose protection visa was cancelled.

The RRT cannot review:

- a decision to refuse to grant or to cancel a protection visa where the applicant or visa holder is outside Australia when the decision was made, or
- a decision where the Minister has issued a conclusive certificate on the basis that it is contrary to national interest for that decision to be changed or reviewed.

HOW TO APPLY FOR REVIEW BY THE RRT

Applications for review must be in writing and on the approved application form which can be obtained from the RRT or downloaded from the RRT website (www.mrt-rrt.gov.au) and be lodged with the RRT.

Applications can be lodged at any office of the RRT by hand or by fax or post. It is the responsibility of the applicant to ensure that the application has been **received** by the RRT.

If any of your details change after you lodge the application (eg your name or address) you must ensure you tell the RRT, otherwise you may not receive all documents or information relating to your case.

What is the role of an authorised recipient?

An applicant may give the RRT written notice of the name and address of another person whom they wish to be their “authorised recipient”.

The authorised recipient will receive all documents and notices in connection with the review. It is the responsibility of the authorised recipient to ensure that the applicant receives the document or notice. The applicant is deemed to have received the document as soon as the authorised recipient receives it, even if the authorised recipient does not give you that document.

WHO SHOULD APPLY?

The visa applicant must apply for review at the RRT.

If several persons applied for visas together as family members, applications for review can be combined on one application form and only one application fee is payable if the review is unsuccessful. If there are a number of family members who each have separate applications for review before the RRT, you should tell the RRT. In these circumstances the RRT may choose to hold a combined hearing for these cases.

WHEN YOU SHOULD APPLY

The RRT cannot accept an application which is lodged outside of the time limits. This is very strictly enforced and there are **no exceptions**. Therefore you **must** ensure that you lodge your application for review within the permitted time period.

You do not need to have all your evidence ready at the time of lodgment. You can submit the application form within the time period and provide further evidence (eg statements, documents etc) later.

If you are in immigration detention you must submit your application for review within **7 working days** of the date you were notified of the decision to refuse or cancel your visa.

If you are not in immigration detention you must submit your application for review within **28 calendar days** of the date you were notified of the Department's decision to refuse or cancel your visa.

If you were handed a decision by an officer of the Department or received it by email or fax you are taken to have been notified on the date it was given to you or sent by email or fax.

If the decision was sent by mail within Australia you are taken to have been notified 7 working days (ie exclude weekends and public holidays) immediately after the date of the Department's covering letter.

HOW MUCH DOES IT COST?

There is no application fee for review at the RRT.

However, if your appeal is unsuccessful then you will have to pay a fee of \$1,400. This is payable within 7 days of receipt of the notification from the RRT that your application for review was not successful. Only one fee is payable even if the application includes more than one person.

HOW LONG DOES IT TAKE?

The RRT aims to make a decision on all protection visa cases within 90 days of receiving the Department of Immigration file. However, some cases do take longer than 90 days. In order to minimise the length of the appeal you should respond to all requests by the RRT as soon as possible and provide comprehensive and detailed evidence and submissions.

If you have circumstances that may warrant the RRT treating your case with priority you should bring this to the attention of the RRT (preferably when you lodge the application for review), together with appropriate evidence of why you require priority processing. Relevant circumstances could include:

- being in detention
- suffering from serious medical conditions (including as a result of torture or trauma)
- experiencing serious financial hardship, or
- separation of a child from a parent or care giver.

WHAT WILL THE RRT LOOK AT?

The RRT will consider your case as if it is a fresh application and will look at:

- all evidence and applications which were provided to the Department during the application process and any other evidence or documents gathered or created by the Department
- any submissions or evidence which you submit to the RRT for their consideration, and
- any evidence provided at the hearing.

The RRT also has independent power to conduct its own investigations. For example it may contact your employer, friends or family if you have provided evidence from, or about, them.

If the RRT has any adverse information about you (ie information which may cause the review application to fail) then it will notify you and ask you to comment on that information. If you receive such a notification it is very important that you do respond to the request for comments within the time limit specified, otherwise your review application is likely to fail. If you are not able to respond within the time limit specified then you may request an extension. The tribunal Member may grant an extension of 28 days if the information is to be provided from within Australia or 70 days if the information is to be provided from outside Australia.

If you want access to the documents and files in the RRT's possession in relation to your case, you can request access under the *Freedom of Information Act* 1982 ("FOI Act"). FOI request forms are available from the RRT and from the RRT website.

WHAT EVIDENCE SHOULD YOU PRESENT?

What evidence you need to present will depend on the specific circumstances of your case. You are trying to explain your situation to the RRT and make it easy for them to understand. For example, you may want to provide a chronology of events or a family tree to make it clear to the RRT what has happened and how people mentioned in the application are relevant to you.

After you lodge the application for review it may be useful for you to submit an application to receive a copy of your file held by the Department under the *Freedom of Information Act 1982*. This is done quickest through the RRT. The Department file is transferred to the RRT once the RRT application is accepted. Therefore, if you apply for access to your file at the RRT you will also receive access to the Department file. The relevant form to request access to your RRT file is available on the RRT website (www.rrt.gov.au). This will help you to work out why the Department made the decision it did. You will need to address each of the Department's concerns and give reasons or evidence for why the RRT should not reach the same conclusion as the Department. For example, if the Department has said it was not satisfied that you were of a certain religious group, you may need to provide more evidence to prove that you are of that religious group.

You should also bring to the RRT's attention any changes in your circumstances, or the situation in your home country, which have occurred since the decision by the Department. For example:

- if you have seen a psychologist or doctor in relation to a medical or psychological condition that impacts on your protection claim then you should obtain an up-to-date report from that psychologist or doctor and submit it to the RRT
- if family or friends have been killed, kidnapped or tortured in your home country
- if you or your family have received any kinds of threats
- if there has been a change in government in your home country – you will need to explain how this change affects you and your claims to protection, or
- if you have married an Australian or had an Australian child.

If you are submitting documents then you should provide certified copies of those documents and have the originals with you at the hearing. It is a good idea to provide certified copies to the RRT together with a cover letter explaining the relevance of the documents. You should keep a copy of all documents you provide to the RRT.

WHAT IS THE PROCESS FOR REVIEW?

The procedures for the RRT will vary from case to case but generally proceed along the following lines:

- you will lodge your application
- you will receive a letter from the RRT confirming receipt of your application and asking you to lodge any additional documents you want to lodge
- your case will be allocated to a RRT member who will review the documents
- if a favourable decision is reached on the documents alone the case will be finalised otherwise you will be invited to provide comments or provide further information to the RRT
- you will be invited to a hearing – your migration agent can attend the hearing with you but cannot answer questions on your behalf
- you can request an interpreter for the hearing if required
- when you are invited to the hearing you will be sent a letter, including a form titled Response to Hearing Invitation – you should complete this form and send it back to the RRT telling them whether you want to attend the hearing and whether you require an interpreter (you should use this form to tell the RRT if you require the RRT Member or interpreter to be of a particular gender)
- if you want any witnesses to give evidence on your behalf you should notify the RRT – the Member is not required to allow you to have witnesses but may do so where the witness can give evidence which is relevant to your protection claims
- at the hearing you can give evidence and/or have other people give evidence in support of you – the hearing is generally informal, the average hearing goes for about two hours

- at any time during the review process you may be invited to provide some further evidence or documentation (or your advisor may be invited on your behalf to provide that evidence) – you must ensure that you either respond within the time period specified or request an extension of time to respond, and
- you will be provided with a written statement of the decision and reasons – you can either collect this in person at the handing down or it will be posted to you.

WHAT IF MY REVIEW IS NOT SUCCESSFUL?

If your application for review at the RRT is not successful then you will be notified that you have 28 days in which to make arrangements to leave Australia.

If you held a TPV as at 27 August 2004, you may have other options. These are set out in the following IARC information sheets:

- *Return Pending visa*, and
- *Mainstream visas for TPV and THV holders*.

It is recommended that you speak to a registered migration agent if you fit within this category.

If you do not want to leave Australia then you have two potential further avenues for review:

- you can make a written request to the Minister to exercise his personal discretion to grant you a visa – for details on this you should get a copy of IARC’s information sheet entitled *Ministerial intervention following a decision of a review tribunal*
- in limited circumstances you may be able to appeal to the Federal Court or the Federal Magistrates Court – there are strict time limits for any such appeal. You should contact Legal Aid to discuss your case in relation to this (see contact details below).

BRIDGING VISAS

In most cases the bridging visa which you were granted while the application was being processed will continue for the duration of the appeal process. This bridging visa will expire 28 days after a decision is made by the RRT. For example, if you had a Bridging Visa A while your application was processed by the Department this Bridging Visa A will continue until 28 days after a decision is made by the RRT.

If you are seeking review of a decision to cancel your visa then you must apply for a Bridging Visa E for the duration of the RRT process. You should do this as soon as you are notified of the decision to cancel your visa.

PERMISSION TO WORK

If you had permission to work while your application was being processed by the Department then you will also have a right to work while your RRT appeal is processed.

If you did not have a right to work then you may be able to apply for permission to work. If you hold a Bridging Visa A or B you will be permitted to work. If you hold a Bridging Visa C, in order to be granted permission to work you must show a “compelling need to work”. This means that you must be suffering financial hardship. Usually a person is taken to be in financial hardship if the cost of reasonable living expenses exceeds their ability to pay for them.

If you hold a Bridging Visa E you will need to show a “compelling need to work” and acceptable reasons for the delay in lodging your Protection Visa application. To request work rights you will need to complete form 1005 *Application for a bridging visa – to change bridging visa conditions or to provide lawful status*.

WHAT IF MY REVIEW IS SUCCESSFUL?

The RRT decides whether a person is a “refugee”. If the RRT finds in your favour then it will remit the decision to the Department. The Department will then have to assess character and health and all other criteria before it can grant a protection visa to you.

CONTACT INFORMATION

REFUGEE REVIEW TRIBUNAL

9.30am–4.30pm Monday to Friday

Sydney CBD Level 11, 83 Clarence Street, Sydney, NSW 2000

Ph: (02) 9276 5000

Fax: (02) 9276 5599

Postal address GPO Box 1333, Sydney, NSW 2001

National Telephone Inquiry Line: 1800 814 593

Website: www.mrt-rrt.gov.au

DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC)

Counter service all NSW offices:

9am–4pm Monday to Friday

Sydney CBD 26 Lee Street, Sydney 2000

GPO Box 9984, Sydney, NSW 2001

Parramatta 9 Wentworth St, Parramatta NSW 2150

GPO Box 9984, Sydney, NSW 2001

National Telephone Inquiry Line: 131 881

Website: www.immi.gov.au

LEGAL AID

9am–5pm Monday to Friday

Sydney CBD 323 Castlereagh Street, Sydney, NSW 2000

Ph: (02) 9219 5910

Fax: (02) 9219 5070

Website: www.legalaid.nsw.gov.au

IMMIGRATION ADVICE AND RIGHTS CENTRE INC (IARC)

Administration line: (02) 9279 4300 (between 9am and 5pm)

Website: www.iarc.asn.au

IARC Telephone Advice	IARC Face-to-face advice (by appointment only)
(02) 9262 3833 Tuesday and Thursday 2.00pm–4.00pm	Contact us to make an appointment at: Immigration Advice and Rights Centre Inc. Level 5, 362 Kent Street Sydney NSW 2000 Ph: +61 2 9279 4300 (Admin Line, 9-5pm)